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Nos. 94-1644 and 94-9087

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

BABY "RICHARD," a minor, By his guardian *ad litem* Edward J. O'Connell, and JOHN AND JANE DOE, Former adoptive parents of the child Richard,

Petitioners,

v.

OTAKAR KIRCHNER, Biological father of the child Richard,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF AMICUS CURIAE OF HONORABLE PAUL SIMON, UNITED STATES SENATOR, HONORABLE CAROL MOSELEY-BRAUN, UNITED STATES SENATOR, THE AMERICAN ACADEMY OF CHILD AND ADOLESCENT PSYCHIATRY, AND THE AMERICAN ACADEMY OF PEDIATRICS IN SUPPORT OF PETITION FOR CERTIORARI OF BABY "RICHARD"

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF PETITION FOR CERTIORARI OF BABY "RICHARD"

Amici, Honorable Paul Simon, United States Senator, Honorable Carol Moseley-Braun, United States Senator, The American Academy of Child and Adolescent Psychiatry and The American Academy of Pediatrics (collectively, "Amici"), pursuant to Supreme Court Rule 37.2, respectfully move for leave to file the attached brief *amicus*

curiae in support of the Petition for Certiorari of Baby "Richard" to review the judgment of the Illinois Supreme Court in this case. Amici have sought the consent of the parties to file their brief. Petitioners Baby "Richard" and John and Jane Doe have consented, and the original letters from petitioners' counsel evidencing such consent have been filed with the Clerk of this Court. Respondent Otakar Kirchner has refused Amici's request for consent, thereby necessitating this motion.

As set forth more fully in the "Interest of the Amici" section of the brief, each of the Amici have devoted themselves or their organization to issues affecting children and have consistently sought to protect the rights of children.

The Illinois Supreme Court's decision determined that minors have no constitutional rights to due process in the context of a failed adoption. Amici strongly believe that this decision is incorrect. This Court has consistently recognized children's rights to due process in a variety of situations, which should extend to the right of a child to due process in a custody determination made after a failed adoption.

This brief *amicus curiae*, which Amici respectfully request permission to file, further amplifies the discussion regarding the due process rights of children and the national policy implications of the Illinois Supreme Court's decision.

Respectfully submitted,

One of the Attorneys for Amici Honorable Paul Simon, United States Senator, Honorable Carol Moseley-Braun, United States Senator, The American Academy of Child and Adolescent Psychiatry, and The American Academy of Pediatrics

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BRIEF AMICUS CURIAE IN SUPPORT OF PETITION FOR CERTIORARI OF BABY "RICHARD"

INTEREST OF THE AMICI

Paul Simon is a United States Senator from Illinois. In addition to being an adoptive father himself, Senator Simon is a Co-Chair of the Congressional Coalition on Adoption. Since 1985, he has served on the Senate Judiciary Committee, and chaired its Subcommittee on the Constitution from 1987 through 1994. He also sits on the Senate Labor and Human Resources Committee, which addresses issues related to children's health, education and

welfare. Senator Simon's longstanding interest in the rights of children and particularly, adoptive children, leads him to file this brief *amicus curiae* before the court.

Carol Moseley-Braun is a United States Senator from Illinois, the home state of the child Richard. She served on the Senate Judiciary Committee from 1993-1995, and was a member of the Courts and Administrative Practice and Juvenile Justice Subcommittees. She is the author of national legislation regarding adoption. Her longstanding interest in issues that concern the children of Illinois lead her to support the Petition for Writ of Certiorari in this case.

The issues presented on this petition for certiorari have wide-ranging implications with respect to the constitutionally protected interests of children who are subject to custody disputes. Similarly, the issues are significant to the security of adoptive families when an adoption is determined to have failed for one reason or another. As public servants and legislators, Senator Simon and Senator Moseley-Braun have consistently worked to protect the rights of children. For these reasons, both Senators support the Petition for Certiorari of Baby "Richard."

The American Academy of Child and Adolescent Psychiatry (AACAP) is a national professional organization of more than 5,700 child and adolescent psychiatrists. Its members are physicians who have completed a general psychiatry residency and two years additional residency training in child and adolescent psychiatry. AACAP members actively research, diagnose, and treat psychiatric disorders affecting children and adolescents and their families. The AACAP is dedicated to supporting this work through a variety of programs including government affairs, national public information and continuing medical education.

The American Academy of Pediatrics (the "Academy") is a national non-profit medical specialty society of more than 49,000 board-certified pediatricians. The Academy's principal purpose is to ensure the attainment by all children of their full potential for physical, mental and social health. To that end, the Academy advocates for children and their right to medical care through various means, including the adoption of professional policies, educational programs of all kinds, efforts to influence social and governmental policy and, occasionally, litigation.

Providing care for adopted children always has been a significant part of pediatric practice and the Academy has repeatedly demonstrated its unwavering commitment to the physical, mental and social welfare of these children. Indeed, the Academy has created a special committee called the Committee on Early Childhood, Adoption, and Dependent Care (the "Committee") which has focused on the unique needs of the adopted child. Through this Committee the Academy has issued numerous policy statements specifically addressed to issues involving adoption. (*See e.g., Initial Medical Evaluation of an Adopted Child*, AAP Policy Reference Guide (the "Guide") at 367 (1994); *Issues of Confidentiality in Adoption: The Role of the Pediatrician*, Guide at 389 (1994); *Families and Adoption: The Pediatrician's Role in Supporting Communication*, Guide at 194-195 (1994)). Through these policy statements the Academy and the Committee have emphasized that the adopted child and the adoption process may bring with them medical, emotional, cultural and psychosocial problems which demand special attention. The Academy has emphasized that in addressing these unique problems, the pediatrician, the adoptive family and society must recognize that among the primary needs and entitlements of every child and certainly the adopted child is a sense of

unconditional love, acceptance and permanency in the context of his or her adopted family.

As non-profit medical societies devoted solely to issues affecting children, the American Academy of Pediatrics and the American Academy of Child and Adolescent Psychiatry join Senators Simon and Moseley-Braun in supporting the Petition for Certiorari of Baby "Richard."

SUMMARY OF THE ARGUMENT

The issue in this case is whether a child is entitled, as a matter of due process, to a hearing on the issue of his custody after his or her adoption becomes void. The Illinois Supreme Court held that a child under these circumstances must be transferred to his biological father pursuant to a writ of *habeas corpus*, with no consideration of the interests of the child in that transfer of custody. The Illinois Supreme Court's decision, heavily emphasizing its view of the constitutionally protected interests of the biological parent, interpreted this Court's precedents to require that the child be returned to his biological father in order to vindicate the father's due process rights. In so ruling, the Illinois Supreme Court ignored the equally compelling and fundamental constitutionally protected interest of the child.

This Court has consistently recognized the rights of individuals, including children, to due process when decisions are made by the state which impact such constitutionally protected interests as the preservation of fundamental family relationships. Despite this Court's consistent recognition of due process rights when such relationships are impacted, Richard and the Does have been deprived of their fundamental family relationships with each other without the benefit of any hearing to consider Rich-

ard's interests in the outcome of the custody determination. This Court should grant *certiorari*, not only because of the grave injury a change in custody may cause to Richard, but, more importantly, because review is necessary to confirm the child's constitutional right to a full evidentiary hearing to determine the effect of a custody change on *all* interested parties.

ARGUMENT

Justice Brewer, writing for the Supreme Court of Kansas over a century ago, identified the legal standard which ought to apply in child custody determinations:

> [When a] child has been left for years in the care and custody of others, who have discharged all the obligations of support and care which rest upon the parent, then, whether the courts will enforce the father's right to the custody of the child, will depend mainly upon the question whether such custody will promote the welfare and interest of such child . . . It is an obvious fact that ties of blood weaken, and ties of companionship strengthen, by lapse of time; and the prosperity and welfare of the child depend on the number and strength of these ties, as well as on the ability to do all which the promptings of these ties compel.

Chapsky v. Wood, 26 Kan. 650, 653 (1881).

The issue in this case, as in *Chapsky*, is whether a child who has spent his entire life in the care of a loving and supportive family is to be removed from that family and given to a biological father he has never met. Richard has been ordered by the Illinois Supreme Court to sever all of the ties he has to his adoptive parents and their son, Richard's adoptive brother, and has been ordered into

the custody of his biological father—a man now married to the woman who signed away all her rights to Richard four days after his birth, and who told the biological father the baby had died. Unlike the enlightened court in *Chapsky*, the Illinois Supreme Court has taken the position that Richard's biological parent has an absolute due process right to custody of his child, and that Richard has no parallel constitutionally cognizable interest in the outcome of these proceedings. In essence, the Illinois Supreme Court held, as a matter of constitutional law, that Richard's interests in a determination of his own custody were irrelevant.

This holding was manifestly erroneous. Like his biological father, and like his adoptive parents, Richard is entitled to full consideration of his interests before an award of custody is entered: the kind of consideration required by the due process clause, and available only through a complete evidentiary hearing on the wide range of interests affected by a custody determination in this case.

I. Richard Was Denied His Constitutional Right To Due Process By the Illinois Supreme Court's Ruling

In ruling that, absent a finding of unfitness, a biological parent is automatically and constitutionally entitled to custody regardless of what other family relationships the child may have developed, the Illinois Supreme Court ignored Richard's right to due process—that is, his right to a full evidentiary hearing to consider Richard's own constitutionally cognizable interests in a custody determination. This Court has consistently recognized that due process is one of the fundamental protections afforded by our Constitution:

> Due process of law is the primary and indispensable foundation of individual freedom. It is the

> basic and essential term in the social compact which defines the rights of the individual and delimits the powers which the state may exercise. As Mr. Justice Frankfurter has said: "The history of American freedom is, in no small measure, the history of procedure."

In re Gault, 387 U.S. 1, 20-21 (1967) (*citations omitted*). Among the historic liberties protected by the due process clause is the right to be free from, and obtain judicial relief for, unjustified intrusions on personal security. *Vitek v. Jones*, 445 U.S. 480, 492 (1980). In this case, however, the Illinois Supreme Court allowed just such an intrusion on Richard's personal security, focusing on the constitutional rights of Richard's biological father. Ironically, in its haste to vindicate the constitutional rights of Mr. Kirchner, the Illinois Supreme Court overlooked the constitutional rights of Richard, and in so doing committed reversible constitutional error.

While this court has never had occasion to consider precisely whether a child is entitled as a matter of due process to a hearing on the issue of permanent custody, it has determined, as a general matter, that minors are protected by the Constitution and possess constitutional rights. *See, e.g., Planned Parenthood of Cent. Missouri v. Danforth*, 428 U.S. 52, 74 (1976); *In re Gault*, 387 U.S. 1, 13 (1967). Indeed, this Court has recognized a child's right to due process in the context of custodial determinations not dissimilar to the proceedings at issue here. In *Gault*, the court determined that a child has a right to due process in the context of a juvenile court action which was designed to determine where that child would temporarily live and be raised, and which had as one of its goals the preservation of extant family relationships. Here, the Illinois Supreme Court's decision determined where

and with whom the child would *permanently* live, a decision with the potential to disrupt and eviscerate the only family relationships that child has known. Under the rationale of *Gault*, the child must be afforded due process—in the form of a full evidentiary hearing on the issue of custody—before a decision impacting his fundamental relationships and living situation is made.

Several of this Court's other decisions also provide a constitutional framework for analyzing the issue presented here, and, like *Gault*, compel the conclusion that the court should revisit the decision of the Illinois Supreme Court. These cases set forth two related propositions. First, contrary to the Illinois Supreme Court's decision, they emphasize that a family relationship giving rise to constitutionally cognizable liberty interests is not simply a function of biology, but rests on emotional and custodial bonds that emerge over time. Second, this Court's decisions recognize that the legitimate interests of a biological parent may be vindicated in a constitutional manner without ignoring other legitimate interests that arise in a custody proceeding, and without resorting to the one-sided constitutional analysis engaged in by the Illinois Supreme Court in this case.

For example, in *Stanley v. Illinois*, 405 U.S. 645 (1972), this Court held that a statutory presumption that an unwed father was an unfit parent and not entitled to custody was unconstitutional, and that the father was entitled to a hearing before the state removed his three children from his custody after the death of their mother. *Id.* at 657-58. Thus, under *Stanley*, the unwed father was given the opportunity to participate in a custody hearing and to petition for custody of his children. He was not, however, held to have an absolute constitutional right to custody of the children in the event he was found to be a fit father.

Similarly, in *Quilloin v. Wolcott*, 434 U.S. 246 (1978), this Court rejected an unwed father's attempt to prevent the adoption of his child by a stepfather and, in so doing, protected the very interests ignored by the Illinois Supreme Court in this case. The Court affirmed the trial court's decision to grant the adoption because it was in the child's best interest. *Id.* at 255. The Court distinguished between the rights of unwed fathers who had long-standing and intimate relationships with their children, as in *Stanley*, and the rights of unwed fathers who lacked any actual relationship with their children other than biology. *Id.* at 248. The Court suggested that the unwed father's parental rights resulted from his relationship with the child and not the biological connection, and that full consideration of the child's interests under a "best interests" standard adequately protected the biological father's own constitutional rights. *Id.* at 254-56. *See also Lehr v. Robertson*, 463 U.S. 248 (1983) (Mere existence of biological link does not merit constitutional protection without actual relationship between the parent and child.).

Finally, in *Smith v. Organization of Foster Families for Equality & Reform*, 431 U.S. 816 (1977), this Court upheld the due process claim of foster parents in New York that they were entitled to a hearing before their foster children were removed from their custody. This Court recognized there, as it should here, that the kinds of familial ties that trigger constitutionally cognizable liberty interests could emerge out of a foster parent relationship, and that a non-biological family was not simply "a mere collection of unrelated individuals," but rather a unit equivalent to a biological family and worthy of preservation:

> [T]he importance of the familial relationship, to the individuals involved and to the society, stems from the emotional attachments that derive from

> the intimacy of daily association, and from the role it plays in "promot[ing] a way of life" through the instruction of children, as well as from the fact of blood relationship. No one would seriously dispute that a deeply loving and interdependent relationship between an adult and a child in his or her care may exist even in the absence of a blood relationship.

Smith, 431 U.S. at 844.

The adoptive parents in this case, if anything, have an even closer relationship to Richard than the plaintiffs in *Smith* had with their foster children, given the temporary nature of the foster parent-child relationship. Nevertheless, the Illinois Supreme Court here, unlike the *Smith* Court, found that the non-biological relationship between Richard and his parents was of no constitutional significance, and that only the biological parent had any constitutionally cognizable interests at stake in Richard's custodial arrangement. In light of *Smith*, this determination was clearly erroneous.

In short, *none* of this Court's cases can be read to stand for the proposition advanced by the Illinois Supreme Court—namely, that the constitutionally protected interests of a biological parent trump all other interests at stake in a custody determination. Indeed, the above decisions point to an outcome precisely the opposite of that reached by the Illinois Supreme Court; *Smith*, *Quilloin*, and *Stanley* all support the notion that family relationships without a biological attachment are *equally* worthy of constitutional protection, and that due process can be achieved for everyone through a full evidentiary hearing on the issue of custody in which all such interests are examined. This is what is required by the Constitution, and this is what the Illinois Supreme Court failed to provide in this case.

II. National Policy Supports Recognition of a Child's Right to a Hearing in Matters Affecting the Child's Emotional and Psychological Relationships

Even if this Court's prior decisions were not controlling in this context, national policy considerations compel the conclusion that a transfer of custody in this case should not take place absent a full hearing that addresses Richard's constitutionally protected liberty interests. As a matter of public policy, the youngest members of our society, who are both vulnerable and without a voice, deserve better protection than the Illinois Supreme Court has provided. Ours is not Roman law, under which a father had complete power over all aspects of his children's lives, including the power to decide whether they should live at all,[1] nor English common law, under which a father had a superior right over the mother to the custody, labor and services of his child, enforceable with little regard to the child's welfare.[2] Under those regimes, a child was considered a financial asset, which the father could sell or transfer as he wished.[3]

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[1] Francis B. McCarthy, *The Confused Constitutional Status and Meaning of Parental Rights*, 22 Ga. L. Rev. 975 (1988).

[2] *Id.* The parental rights doctrine has long been abandoned in England, its common law birthplace:

> The mere desire of a parent to have his child must be subordinate to the consideration of the welfare of the child, and can be effective only if it coincides with the welfare of the child. Consequently, it cannot be correct to talk of the preeminent position of parents, or their exclusive right to the custody of their children, when the future welfare of those children is being considered by the court.

Lucy S. McCough & Lawrence M. Shindell, *Coming of Age: The Best Interests of the Child Standard in Parent-Third Party Custody Disputes*, 27 Emory L.J. 209, 245, (1978), *quoting J. v. C.*, 1 All Eng. Rep. 788, 823 (1969).

[3] Suzette M. Haynie, *Biological Parents v. Third Parties: Whose Right to Child Custody is Constitutionally Protected?*, 20 Ga. L. Rev. 705 (1986).

In this country, by contrast, recognition of children's rights came to the forefront as early as a century ago and continues to be manifested in legislation prohibiting child abuse,[4] establishing juvenile court systems,[5] requiring primary and secondary education[6] and regulating child labor conditions.[7] Thus, our government has long established its interest in protecting and advancing the welfare of children in numerous different fora. This national interest is not purely altruistic, for when children are mistreated, they grow into maladjusted adults who drain, rather than contribute, to society. Promoting the interests of children ultimately benefits society as a whole. *See Prince v. Massachusetts*, 321 U.S. 158, 168 (1944) ("[A] democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens, with all that implies.").

This interest in the welfare of children should, and does, extend into the area or family and custodial relationships. It is well recognized in psychiatric circles, and as a matter of common sense, that changes in the custodial arrangement of a child have the potential to cause him or her severe psychological and emotional harm.[8] The develop-

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[4] *See, e.g.*, 1876 N.Y. Laws 96, ch. 122 § 3.

[5] *See, e.g.*, 1899 Ill. Laws 131; *see also* S. Davis, Rights of Juveniles, 233-49 App. 13 (1974).

[6] *See, e.g.*, Mass. Gen. L. ch. 240, §§ 1, 2, 4 (1852); N.Y. C.L.S. Educ. § 3205 (established 1874); *see also Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

[7] *See, e.g.*, N.D. Cent. Code § 34-07-01 (1890); Fair Labor Standards Act, 29 U.S.C. § 212 (1938); *see also Prince v. Massachusetts*, 321 U.S. 158 (1944).

[8] *See, e.g.*, James G. O'Keefe, *The Need to Consider Children's Rights in Biological Parent v. Third Party Custody Disputes*, 67 Chicago-Kent L. Rev. 1077, 1102 (1991) (separation or loss in early

(Footnote continued on following page)

ment of the parent-child relationship and the impact of disruption of that relationship has been described in detail as follows:

> The child's psychological tie to a parent figure is not the simple, uncomplicated relationship which it may appear to be at first glance. While it is rooted inevitably in the infant's inability to ensure his own survival, it varies according to the manner in which protection is given and the physical needs fulfilled . . . Where the adult in charge of the child is personally and emotionally involved, a psychological interplay between adult and child will be superimposed on the events of bodily care. . .
>
> Such primitive and tenuous first attachments form the base from which any further relationships develop. What the child brings to them are no longer only his needs for body comfort and gratification but his emotional demands for affection, companionship, and stimulating intimacy. Where these are answered reliably and regularly, the child-parent relationship becomes firm, with immensely productive effects on the child's intellectual and social development. Where parental care is inadequate, this may be matched by deficits in the child's mental growth. *Where there are changes of parent figure or other hurtful interruptions, the child's vulnerability and the fragility of the relationship become evident. The child regresses along the whole line of his affections, skills, achievements, and social adaptation.*

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[8] *continued*

childhood of the attached caregiver relates to conduct problems throughout childhood and later in life, cognitive disturbances, depression, suicide risk, and a generally increased risk of psychiatric disturbance).

J. Goldstein, et al., Beyond The Best Interests of The Child, 17-18 (1979) (emphasis added) (hereinafter, "*Goldstein Text*"). *See also* George A. Awad, *Basic Principles in Custody Assessments*, 23 Can. Psychiatr. Assoc. J. 441, 444 (1978) ("A stable and continuous environment is of paramount importance to the child.").

Thus, it is beyond dispute that the personal security of a child in his family relationship is fundamental to his ultimate social, emotional, and psychological health, and, as a matter of public policy, should be protected. All people, but *especially children*, should be secure in their fundamental relationships. As a matter of public policy, our nation has a strong interest in protecting the peace and tranquility of family relationships and protecting the emotional and psychological relationships of the children. That interest gives rise to the need for full consideration of a child's interests through a full evidentiary hearing before a custody decision is made which may impact on those relationships.

The Illinois Supreme Court, rather than seeking to protect the welfare of Richard and the security of the only family relationships he has known in a manner that would not have prejudiced the constitutional rights of Richard's biological father, instead chose to protect only the property interests of the illegitimate father in his biological offspring. The archaic parental rights doctrine employed by the Illinois Supreme Court gives absolute supremacy to the rights of biological parents. While, as recognized in this Court's precedents, the illegitimate father's rights are certainly deserving of some consideration,[9] they are not so important as to render completely irrelevant the

[9] *See* discussion, *supra*.

compelling interest Richard has in matters affecting his family relationships and psychological health. As the *Goldstein Text* recognizes,

> Whether any adult becomes the psychological parent of a child is based thus on day-to-day interaction, companionship, and shared experiences. The role can be fulfilled either by a biological parent or by an adoptive parent or by any other caring adult—but never by an absent, inactive adult, whatever his biological or legal relationship to the child may be.

Goldstein Text at 19. It is apparent that, at first blush, Richard's biological father, Otakar Kirchner, fulfills none of the roles of a psychological parent for Richard. Under the circumstances, a full-blown custody hearing is absolutely essential to a full understanding of the impact a custody transfer will have on Richard, as well as on the other interested parties. Awarding Mr. Kirchner custody of Richard may vindicate Kirchner's parental rights, to the extent they exist. However, the Illinois Supreme Court's actions come at the complete expense of a child who had no hand in creating the situation in which he finds himself, and whose development into a mature, responsible adult may be retarded as a result. It is fundamentally wrong, as a matter of policy as well as constitutional law, to require Richard's interests to go unaddressed here, given the potentially devastating impact of a transfer of custody on this innocent child.

Additionally, the Illinois Supreme Court's decision conflicts fundamentally with our national interest in encouraging adoption. Adoption has long been encouraged as a matter of public policy, for obvious reasons, including the need to afford children a stable environment and to avoid the public expense associated with raising children in public institutions or in homes where the children are not

wanted. The Illinois Supreme Court's decision introduces an additional element of risk into the adoption equation which may adversely impact the willingness of potential adoptive parents to take on the responsibility of an unwanted and/or illegitimate child, particularly where the biological father is unidentified. Out-of-wedlock births numbered 1.2 million in 1991, almost one-third of all births in the United States. Fathers were not legally identified in about 65 percent of those births. R. Worthington, *Adding Father to Family: Paternity Laws Take Aim at Poverty*, Chicago Tribune, Feb. 14, 1994, § 1 at 1. A potential adoptive family has no way of knowing whether or when an unidentified biological father may appear at some point in the child's life, claim to have been defrauded by the biological mother, and demand and receive immediate custody of the child. Under the Illinois Supreme Court's decision, the adoptive parents would be required to immediately turn the child over to the biological father. Potential adoptive parents may not be willing to consider for adoption the 65 percent of illegitimate children whose fathers are not identified for fear that those fathers will take the child from them at some point in the future.

Similarly, unwed mothers may be less willing to place a child for adoption if they know that the father, whom they may believe to be unfit, will have an absolute right to custody of the child. The resulting barrier to adoption may have a substantial impact on federal expenditures in areas such as welfare and Medicaid.

These outcomes make no sense as a matter of public policy. Clearly, once an adoption decree has been entered, there are multiple parties with constitutionally cognizable interests in the outcome of any subsequent custody battle, including the child and his adoptive parents, as well as the biological father. At a minimum, both due process and

sound public policy require that each of those parties be heard and the interests of the child considered before an award of custody is made. Only through such a hearing can we vindicate our commitment both to due process for everyone and our historic solicitude for the most helpless and valuable members of our society—our children.

CONCLUSION

The Illinois Supreme Court's decision in this case is troubling in many of its aspects, but none more so than its failure to even consider the due process rights of Richard, a four year old child, to a custody hearing in which his considerable interests, as well as those of the other parties, would be fully considered. The Illinois Supreme Court has entered an order which would destroy the only psychological, emotional, and family relationships that Richard has ever known. This Court has consistently recognized a right to due process when the state invades the province of fundamental family relationships. It is critical that this Court grant *certiorari* in this case to vindicate Richard's constitutionally protected interests and his due process right to a full custody hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Kathleen M. O'Laughlin, an attorney, certify that a true and correct copy of the foregoing Motion for Leave to File Brief and Brief Amicus Curiae of Honorable Paul Simon, United States Senator, Honorable Carol Moseley-Braun, United States Senator, The American Academy of Child and Adolescent Psychiatry, and the American Academy of Pediatrics in Support of Petition for Certiorari of Baby Richard was served upon:

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by placing a copy of the same in the United States Mail, with first-class postage properly prepaid, this 11th day of May, 1995.